

## Suggested Sample Mitigation Conditions

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**STANDARD MITIGATION CONDITIONS.** In general, permits issued with a mitigation plan should include the following standard conditions. These conditions may be modified as appropriate on a case-by-case basis.

1. That the compensatory mitigation plan must be implemented expeditiously. The mitigation plan includes the following elements:

[Note: Insert here a general description of the mitigation plan. For example: *The compensatory mitigation plan is described in the above referenced Pre-Construction Notice and supplemental materials. The mitigation plan includes preservation of not less than 52.0 acres of aquatic area on the project site together with not less than 10.5 acres of undisturbed non-aquatic buffers. The locations of said areas to be preserved being shown on the above referenced drawing sheets.*]

2. That evidence of completion of the mitigation plan must be submitted to the Corps not later than 60 days from the date of issuance of this permit, or prior to commencement of the authorized work, whichever is later. [Note: For Nationwide or Regional General Permits, the words "issuance of this permit" may be replaced with "this letter."]

3. That preservation of property owned by the permittee shall be done by means of either deed restrictive covenants or conservation easement. Restriction of property not owned by the permittee at the time the restrictions are executed must be done by means of conservation easement and not by restrictive covenants. Not less than 30 days prior to their execution, the draft covenants or easement documents must be submitted to the Corps for approval. Samples for covenants and easements will be provided upon written request or may be obtained on the Internet at <http://www.sac.usace.army.mil/>.

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**EXAMPLES.** The following examples show mitigation conditions used in various permits. Note that the model language given above has evolved since some of these conditions were used. The model should be preferred over older variations in most cases. But, circumstances sometimes required customized variations for things work as intended.

### Sample Conditions #1.

1. That the compensatory mitigation plan shall be expeditiously implemented. The compensatory mitigation plan is described in the above referenced PCN and supplemental materials.
2. That for preservation of property owned by the permittee may be by means of either deed restrictive covenants or conservation easement. For preservation of property not owned by the permittee must be by means of conservation easement and not by deed restrictive covenants. The covenants or easement documents must be reviewed and approved by the Corps prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site (<http://www.sac.usace.army.mil/>).
3. That evidence of completion of the compensatory mitigation plan must be submitted to the Corps not later than 30 days after completion of the selective cutting and planting or June 1999, whichever is earlier.

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### Sample Conditions #2.

1. That the compensatory mitigation plan shall be expeditiously implemented. The compensatory mitigation plan includes the following:
  - a. Protection in perpetuity of not less than 1.07 acres of aquatic area on site with 2.47 acres of upland buffers.
  - b. Protection in perpetuity of not less than 8.24 acres of aquatic area with 10.28 acres of upland buffers all located on Spring Island.
2. The mitigation areas are generally as described and depicted on the permit drawings and the application narrative submittals. Protection of properties not owned by the permittee must be by means of conservation easement. Protection of properties owned by the permittee shall be by means of either conservation easement or deed restrictive covenants. The covenants or easement documents must be reviewed and approved by the Corps of Engineers prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site at <http://www.sac.usace.army.mil/>.
3. That evidence of completion of the compensatory mitigation must be submitted to the Corps not later than 60 days from the date of this permit, or prior to commencement of the authorized work, whichever is later.

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### **Sample Conditions #3.**

That, as compensatory mitigation, the permittee shall expeditiously implement the proposed compensatory mitigation plan. The mitigation plan includes preservation of not less than 18.48 acres with upland buffers surrounding preserved aquatic areas. Not less than 7.58 acres of the mitigation shall consist of preservation of on-site waterway areas labeled as waterways #1 and waterways #9 thru #13. These on-site waterway areas will be preserved together with a twenty-five (25) foot minimum width upland buffer. Not less than 10.9 acres of the mitigation shall consist of off-site preservation of about 4,714 linear feet of bed and bank in the Eastatoe Creek watershed. This off-site preservation shall be enhanced by preservation of fifty (50) foot minimum width upland buffers on each bank. The preserved areas must be protected in perpetuity by means of conservation easement or restrictive covenants. The restrictive covenants or conservation easement documents must be reviewed and approved by the Corps prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site (<http://www.sac.usace.army.mil>). Evidence of completion of all elements of the mitigation plan must be submitted to the Corps not later than 60 days from the date of this permit, or prior to commencement of the authorized work, whichever is later.

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### **Sample Conditions #4.**

1. That the compensatory mitigation plan shall be expeditiously implemented. The compensatory mitigation plan is depicted on the permit drawing sheets and includes the following elements:

(a) Preservation of not less than 83.56 acres of aquatic areas with 26.45 acres of undisturbed upland buffer and 3.92 acres of selectively cleared upland buffers.

(b) Preservation shall be by means of either deed restrictive covenants or conservation easement. The covenants or easement documents must be reviewed and approved by the Corps prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site (<http://www.sac.usace.army.mil>). Evidence of completion of all elements of the mitigation plan must be submitted to the Corps not later than 60 days from the date of this permit, or prior to commencement of the authorized work, whichever is later.

2. That, prior to execution, the mitigation plan shall be supplemented with details regarding vegetation for Wetland Areas F and H and the associated buffer area. The purpose shall be to enhance the use of this area as a bird rookery by providing suitable vegetation as necessary. The vegetation plan shall consist of species approved as acceptable to the Corps or SCDHEC.

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### **Sample Conditions #5.**

1. That the compensatory mitigation plan shall be expeditiously implemented. The compensatory mitigation plan includes preservation in perpetuity of not less than 112.46 acres of aquatic areas with not less than 18.99 acres of upland buffers on the project site. The mitigation areas are generally as described and depicted on the permit drawings and the application submittals. Preservation shall be by means of either deed restrictive covenants or conservation easement. The covenants or easement documents must be reviewed and approved by the Corps of Engineers prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site at <http://www.sac.usace.army.mil>.

2. That evidence of completion of the compensatory mitigation must be submitted to the Corps not later than 60 days from the date of this permit, or prior to commencement of the authorized work, whichever is later.

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### **Sample Conditions #6.**

1. That the compensatory mitigation plan shall be implemented expeditiously. The compensatory mitigation plan is described in the above referenced PCN and supplemental materials. The mitigation plan includes preservation of not less than 2.3 acres of aquatic area adjacent to Fourteen Mile Creek together with not less than 1.09 acres of adjacent non-aquatic buffers. The locations of said areas to be preserved being shown on the above referenced drawing sheets.

2. That preservation of property owned by the permittee shall be done by means of either deed restrictive covenants or conservation easement. Preservation of property not owned by the permittee must be done by means of conservation easement and not by deed restrictive covenants. The covenants or easement documents must be reviewed and approved by the Corps prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site (<http://www.sac.usace.army.mil>).

3. That evidence of completion of the mitigation plan must be submitted to the Corps not later than 60 days from the date of this letter, or prior to commencement of the authorized work, whichever is later.

## Suggested Sample Mitigation Conditions

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### Sample Conditions #7.

1. That the compensatory mitigation plan shall be implemented expeditiously. The compensatory mitigation plan is described in the above referenced PCN and supplemental materials. The mitigation plan includes the following:

- a. Preservation of not less than 0.40 acres of aquatic area.
- b. Preservation of not less than 0.61 acres of upland buffers around the preserved aquatic site. The said upland buffers shall include not less than 0.23 acres of buffer with a minimum width of 35 feet on the northwardly side of the aquatic area and not less than 0.38 acres of buffer with a minimum width of 50 feet on the southwardly side.
- c. Purchase of 2.858 credits from Vandross Bay Mitigation Bank or other suitable credits from an approved Mitigation Bank subject to prior review of the credit calculations by the Corps.

2. That preservation of property owned by the permittee may be by means of either deed restrictive covenants or conservation easement. Preservation of property not owned by the permittee must be by means of conservation easement and not by deed restrictive covenants. The covenants or easement documents must be reviewed and approved by the Corps prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site (<http://www.sac.usace.army.mil>).

3. That evidence of completion of the mitigation plan must be submitted to the Corps not later than 60 days from the date of this letter, or prior to commencement of the authorized work, whichever is later.

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### Sample Conditions #8.

1. That the compensatory mitigation plan shall be implemented expeditiously. The compensatory mitigation plan is described in the above referenced PCN and supplemental materials. The mitigation plan includes the following:

- a. Preservation of not less than 0.79 acres of aquatic area on the project site.
- b. Preservation of upland buffers around the preserved aquatic site. The said upland buffers shall include not less than 0.27 acres of buffer with a minimum average width of not less than 25 feet.
- c. Purchase of credits from an approved Mitigation Bank in accordance with the applicable bank operating procedures and with prior review and approval of the credit calculations by the Corps. If the credits are purchased from the Vandross Bay Mitigation Bank, then the minimum requirement shall be purchase of **3.8 Vandross Mitigation Bank credits** which is based on an unmitigated area of 0.91 acres as calculated in accordance with the Charleston District Mitigation SOP.

2. That preservation of property owned by the permittee may be by means of either deed restrictive covenants or conservation easement. Preservation of property not owned by the permittee must be by means of conservation easement and not by deed restrictive covenants. The covenants or easement documents must be reviewed and approved by the Corps prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site (<http://www.sac.usace.army.mil>).

3. That evidence of completion of the mitigation plan must be submitted to the Corps not later than 60 days from the date of this letter, or prior to commencement of the authorized work, whichever is later.

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### Sample Conditions #9.

1. That the compensatory mitigation plan shall be implemented expeditiously. The compensatory mitigation plan is described in the above referenced PCN, supplemental materials, and DHEC certification. The mitigation plan includes the following:

- a. Preservation of the below listed aquatic areas with upland buffers on the project site, as shown on the above referenced drawing sheets.

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Aquatic Unit	On-Site Aquatic Acres			Acres of Buffer
	Pre-Work	Fill Permitted	Preserved	
WA-1	3.730	0	3.730	0.132
WA-2	4.455	0	4.455	0.202
WA-3	1.074	1.074	0	0
WA-4	0.119	0.119	0	0
WA-5	12.766	0.050	12.716	1.416
<b>TOTALS</b>	<b>22.144</b>	<b>1.243</b>	<b>20.901</b>	<b>1.750</b>

b. Purchase of not less than 13.6 credits from an approved Mitigation Bank such as the Black River Bottomland Hardwoods Mitigation Bank, or other qualified banks.

2. That preservation of property owned by the permittee may be by means of either deed restrictive covenants or conservation easement. Preservation of property not owned by the permittee must be by means of conservation easement and not by deed restrictive covenants. The covenants or easement documents must be reviewed and approved by the Corps prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site (<http://www.sac.usace.army.mil>).

3. That evidence of completion of the mitigation plan must be submitted to the Corps not later than 60 days from the date of this letter, or prior to commencement of the authorized work, whichever is later.

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### Sample Conditions #10.

1. That the compensatory mitigation plan shall be implemented expeditiously. The compensatory mitigation plan is described in the above referenced PCN and supplemental materials. The plan includes the following elements.

a. Preservation in perpetuity of all remaining wetlands on the project site together with preservation of upland buffers. These onsite preservation areas are generally depicted on the above referenced drawing sheets and materials and include not less than 1.67 acres of aquatic area (including wetlands) together with not less than 1.20 acres of non-aquatic upland buffers to be preserved on the project site.

b. Purchase of not less than a total of 3.697 mitigation credits from an approved mitigation bank. At least 0.6435 of these credits must be non-preservation mitigation credits and the remaining 3.0535 may be either preservation or non-preservation credits. If the Vandross Mitigation Bank is used then the minimum required banking credits shall be based on an unmitigated impact of 0.4564 acres. Unmitigated acres are calculated in accordance with the District's Mitigation SOP, as follows.

$$\text{Unmitigated acres} = [(7.047 - 3.35)/7.047] \times 0.87 \text{ acres} = 0.4564 \text{ acres}$$

2. That preservation of property owned by the permittee shall be done by means of either deed restrictive covenants or conservation easement. Preservation of property not owned by the permittee must be done by means of conservation easement and not by deed restrictive covenants. The covenants or easement documents must be reviewed and approved by the Corps prior to execution. Sample language for covenants and easements can be found on the Internet at the Charleston District web site (<http://www.sac.usace.army.mil>).

3. That evidence of completion of the mitigation plan must be submitted to the Corps not later than 60 days from the date of this letter, or prior to commencement of the authorized work, whichever is later.